RECENT TENDENCIES IN THE REFORM OF LAND TENURE.

Frenchmen are fond of speaking of the great revolution of a century ago as if it were the source from which all subsequent European reforms have sprung. But each country has its own germs of development, and the strongest historical influences have been from within the nations, not from without. Yet it is true that the French revolution was to a most wonderful degree a microcosm of modern history. Scarcely a form of subsequent political or social experience in any western country is without its type in France in those turbulent years. An instance of this is found in one of the earliest movements of the revolution, the series of reforms in landholding. This was not only one of the first institutions of French society to feel the effects of the revolution, but during that whole period it was the object of much legislation and administrative attention. Since that time it has never been long out of discussion. What began thus early in France, began at somewhat later dates in every other country of Europe. Questions of land tenure have been among the constantly recurring problems of internal policy in each of those countries. In this course of discussion and legislation it is curious to note that notwithstanding all the differences of national institutions and national character, the questions connected with landholding have taken much the same form in the whole group of western nations, and the solutions themselves, in as far as they have been reached, have a considerable degree of similarity.

A century ago, at the beginning of the French revolution, landholding in every country in Europe retained the stamp which the middle ages had impressed upon it. Although the feudal system as a form of government had long before given

place to more centralized monarchical power, yet in many of its social and economic elements it still remained dominant over the life of the people. This was especially true of landholding, the privileges of which had been left to the nobility as a partial equivalent for the political power they had lost. The system of land tenure moreover had the marks not only of feudalism but also of the earlier communal system on which feudalism had been imposed. In France the slow, insensible effect of economic growth had modified the earlier conditions more than in most countries, but even here the apparent possessors of much of the soil held it in very incomplete ownership, and subject to many feudal burdens. Primogeniture was the legal rule of descent, *mortmain*, through the church, had its clutch on almost one-third of the soil of the country, and another third was in the entire possession of the *seigneurs*. The communes still held a great deal of undivided land. This condition of things was attacked in the first great series of reforms of the revolution, the legislation initiated on the night of August 4, 1789. By these decrees the remains of serfdom in France were abolished, all rights of the lords over holders of land in their manors were either abrogated outright or made redeemable, and the exclusive right to all game and fish on lands lying within the borders of their manors taken away. A whole series of old burdens on landholding was removed and the actual occupants of the soil in France were emancipated from much of the pressure of effete feudalism. Three months afterward the National Assembly declared the estates of the church national property, they were sold and thus taken out of the trammels of *mortmain*. In 1793 lands belonging to emigrant nobles and persons convicted of political offenses were confiscated and sold, thus lessening to a great degree the applicability of primogeniture. Subsequently the communal lands also were largely divided and sold. Another measure of reform was the breaking of entails, prohibition of primogeniture and substitution therefor of equal division of land as well as other property among all the children. This law of bequest finally settled into the condition perpetuated by the Code Na-

poléon, by which all lands must be divided either equally among the children or with one extra portion disposable at the wish of the testator. Although Napoleon in the exigencies of his political system allowed a slight return towards entails yet this was infinitesimal in its effect on the land system of France. Thus in the twenty-five years of the revolutionary period the land of France had been freed from almost all the remains of feudalism and communism, and had been put into the complete ownership of its possessors.

The surrounding nations were not quick to borrow from the French during the revolution, but nevertheless sooner or later most of them succumbed to its influence on their land systems. The incorporation of the portions of Germany west of the Rhine, and of Belgium into France, involved the assimilation of their land systems, and this remained a permanent change. In Holland and the parts of Germany annexed for a shorter period, the alteration of the land system was only temporary, though its influence was permanent. In the States of the Confederation of the Rhine the immediate effect was only appreciable in a few States, such as Westphalia and the Grand Duchy of Berg, Hesse-Darmstadt, and Nassau, and only in certain respects, such as the abolition of serfdom, and the abrogation or redemption of some feudal dues and impositions. Prussia also was influenced, indirectly perhaps, by the movements of the time, and in the Stein-Hardenberg legislation of 1807 and 1811 serfdom was abolished, free purchase and sale of land granted, permission to break entails by a family agreement given, and other reforms introduced. In Germany the communal elements of the mediæval manor had remained in much greater strength than in the countries further west, and a dissolution of the double ownership between lord of the manor and tenant of the manor had to be one of the first steps of reform. The completion of the ownership of the soil by the peasant, in such cases, was provided for by requiring the cession of one-half or one-third of his holding as the condition of his becoming full owner of the remaining portion. Austria alone among all the States of Germany seems to have felt no

effects on its system of land holding from the French revolution. Joseph II, before this time, had introduced modifications of the worst personal elements of the feudal manor, but as a land system it had been and long remained practically untouched. In the Italian Peninsula land tenure at the beginning of the revolutionary period was of a distinctly mediæval type, except indeed, in Tuscany, where the "enlightened despotism" of Leopold I, as of his brother Joseph, in Austria, had already introduced some modern reforms. In 1774, for instance, in his code of provincial regulations, he had given peremptory instructions to all local bodies to alienate their communal lands, either by sale or by the form of perpetual lease known as *allivelazione*. In 1782 he modified entails and primogeniture, and in 1789 abolished them altogether. In some of the other Italian States the panic resulting from the news of the actions of the National Assembly in France, led the governments to introduce some reforms, among which were modifications of primogeniture, and of some of the other abuses of feudal landholding. But these were of little importance compared with the changes brought about by the results of the French invasion. In the ephemeral republics into which Italy was then divided, and in its somewhat more permanent organization as French departments, and the Kingdom of Italy, the French code was introduced as civil law. Under its provisions, over all northern Italy, the burdens of feudalism were removed from the landholders, primogeniture ceased to be the rule of descent, and strict settlement of estates was abolished. In the kingdom of Naples the sovereigns of the house of Bonaparte set themselves to the same work, which was carried out between the years 1806 and 1812 by a "feudal commission." A great mass of the Italian peasantry, before this time only occupants of the soil, now became its real possessors.

In Spain the revolutionary Cortes of 1811 began the work which had been done twenty years before in France. The lords of manors were deprived absolutely of all purely feudal control of the land, and after indemnification were deprived of

all previously irredeemable rights. In England the economic development of the country had made the purely feudal relation of the land holders of comparatively little importance. The original communism of the manor as represented by the "commons," was also to a great extent a thing of the past. The old feudal and manorial constitution still existed, but attracted little attention, and during this whole period received no legislative modification. The land system of England was sufficiently full of abuses, but they were not directly traceable to feudalism or the manorial system. The same absence of land legislation applies also to the countries dependent on England. Thus during the twenty-five years between 1789 and 1814, the land system of Europe as it had existed before the beginning of that period had, with some exception, been radically changed. Feudalism as a system of land tenure was abolished, and the remains of the old communal organization were very much lessened. Private property in land had become a familiar conception where before it had hardly existed. Complete and individual ownership, dissolution of joint claims, freedom of purchase and sale, bequest to all children instead of to a single heir, were more or less fully introduced into all the States of central Europe.

But this development of the land system of Europe had been made in the midst of a great period of political upheaval and reorganization. That period was now at its close, and it remains to be seen how close was the connection between the political movement and land tenure. As the course of land legislation is traced further, it becomes evident that just as the period succeeding the downfall of Napoleon in 1814 was one of political reaction, so in the economic sphere, and especially in landholding, it was a period either of return to old conditions, or at best of cessation of reform and development.

In France, the code and the constitution stood in the way of any radical return to pre-revolutionary land conditions, but even here modifications in the way of reaction were introduced. In 1817 the right to make bequests of land to the church was restored, in 1819 the right to institute *majorats* or entails, restored by

Napoleon for the sake of his new nobility, was extended to all the constitutional peerage of the restoration, and in 1826 the right to make strict settlement to one generation allowed by article 1048 of the code was extended to two generations. This policy culminated in the attempt of the government of Charles X to carry a law making the extra disposable portion allowed by the French legislation in bequests of land go always in cases of intestacy to the oldest son, instead of an equal division taking place. This being clearly a departure from the spirit of the land laws, and an attempt to reintroduce rights of primogeniture, was so strongly opposed by all the liberal elements in France that the attempt was given up. In Prussia a law of 1815 restricted the operation of the Hardenberg legislation to large farms, and in 1821 the calculation of indemnity to be paid by peasants to lords of manors in order to become full owners was again made on the basis of the whole group of old feudal dues, instead of the normal one-half or one-third. In the other German States the process of land enfranchisement that had been going on so rapidly during the last period came to a sudden stop. In the States of the Italian Peninsula the same reaction took place. In Piedmont the old régime was introduced as completely as possible. In Lombardo-Venetian provinces the Austrian code, one of the most backward in Europe in its land legislation, was enforced by the courts; in Modena absolutely all of the old feudal paraphernalia were brought back. In Tuscany and Parma alone was there an enlightened land system. In Spain Ferdinand VII, along with his abrogation of the constitution, repealed the law of 1811 and re-established, in 1814, all of the old feudal rights over the soil.

As this period of retrogression in land tenure reform was an accompaniment of political reaction, so the European revolutions, which instituted political advance, led to renewed progress in land legislation. In 1820, 1830, and 1848 the peoples of the continent made successive efforts to gain liberty, and a resumption of the work of enfranchising the soil from mediæval conditions followed in the wake of each of these movements.

The earliest instance of this close connection between political and economic reform was when the Spanish revolutionary government in 1820 confiscated the *mortmain* lands of the church, limited entails, and re-established the old law of 1811. But the most striking instances are in some of the Italian States. The Sardinian government, for instance, as a result of the risings of 1820 and 1821, turned its attention to reforms, though the only actual result was a law for the public registry of mortgages. After the revolution of 1830 a new code was formulated in which the division of intestate lands left forever the old basis of primogeniture, and settlements and entails were very much limited. In 1832, an edict gave to communes permission to alienate their joint possessions, and at the same time feudal rights and communal holdings were abolished in the Island of Sardinia. In a third step, immediately after the revolution of 1848, entails and all other rights of primogeniture were abolished, and in 1851 the work for that kingdom was practically completed. Similarly in France, the law of 1835 forbade future creations of *majorats* or entails, and that of 1849 provided for the speedy extinction even of those already existing. This law abolished the right of making *substitutions* or strict settlements altogether. In Germany the more backward States which had withstood the earliest movements, all succumbed as a result either of 1830 or of 1848, and followed the main lines of early land tenure reform, abolition of serfdom and feudal dues, modification or abolition of primogeniture in its various forms, division of communal rights, introduction of allodial and individual holdings in place of joint holdings on a feudal basis. For instance, in Hesse-Darmstadt and Würtemberg the long, dragging discussion of feudal burdens remaining from the Napoleonic period, was roused into life by the events of 1830, and in the year 1836 radical laws cleared them away altogether. Still more promptly after the revolution of 1848, we find liberal land laws in Bavaria, Baden, Hesse Cassel and Prussia, before that year was finished. In Austria and Hungary since the attempted reforms of Joseph II, as has been already noted, land legislation had lagged behind almost all

the rest of Europe, and this notwithstanding general recognition of the character of the land system as an anachronism. In 1835, proposals for change had been made by the landholding nobles themselves, but the government with its well-known reluctance to enter upon innovation shrunk from the task. In 1846, however, a peasant rising in Galicia directed the eyes of all Europe upon the land system of the Austrian States, and the Imperial government at last issued a series of decrees facilitating voluntary arrangements between the peasants and the lords. Here, however, it stopped and no effective changes had been made when the storm of revolution in 1848 swept down upon the country. A month after the March risings in Vienna, the emperor promulgated a constitution for the empire which would have necessitated the ultimate enfranchisement of the soil, but soon the new assembly took the matter out of the hands of the sovereign, and on the 4th of September, 1848, decreed the immediate and entire abolition of the whole feudal régime including the burdens and restrictions on land.

After the reactions of 1849, it might have been expected that the recent reforms in land tenure would be reversed, as in 1814. But the century was too far advanced; the risings of 1848 had been almost as much economic as they had been political, and an element had entered into them which had little place in the revolutions of 1820 and 1830. This new element was a demand not for more political rights only, but for greater material prosperity and economic opportunity for the mass of the people. Therefore, although the political reforms failed, at least temporarily, yet the accompanying reforms in landholding were permanent.

In England the land system had gone through a unique development, and had long resisted any influences from the outside. But even here the spirit of the age was at last felt, and the old citadel of English conservatism, the land system, was attacked. But this work scarcely began before the middle of the century. Up to that time the communal holdings in the form of manorial commons and intermixed fields had been

gradually decaying, it is true, partly under the influence of economic forces, partly as the result of direct legislation. The private acts for the enclosure of commons had been superseded in 1801 by a general enclosure act, and this had been extended and developed in 1845. The feudal burdens had become shadowy, and, with the exception of the few "copyhold" tenures, almost obsolete. Nevertheless, the advantage of these changes had not gone to the peasantry, nor to small farmers of any kind, but to a class of landholding families owning the land in large tracts, and having a grip on it stronger than any other class in Europe. Legislation and the theories of the common law had all been developed to perfect the control of this class over the land, and to keep it within their possession. Entails still existed, the custom of strict settlements made practical entails over a large part of the country, in intestate division primogeniture was recognized; there was no public land registry, the formulas of wills and of deeds had become long, complex and doubtful in meaning, all legal actions relating to landholding were slow, cumbrous and dangerous. The land therefore remained for the most part in the hands of its few owners, and sales were difficult and unusual occurrences. The peasantry had been reduced to a hopeless and helpless class of day laborers, and the intervening class, the tenant farmers, paid a competitive rent to the land owners. The first proposition for changes in the English land system were made after an investigation by a board of real property commissioners about 1830. Little by little after that time minute reforms were carried out. These were principally in the direction of simplification of the processes of purchase, sale, mortgage, and bequest of land, and of its assimilation to other forms of property. In 1838 a means was suggested by which copyhold estates could be transformed into actual property. In 1841 a large step towards this was taken and in successive laws, especially those of 1852 and 1858, the change was practically completed. The net result of all the land legislation of England to this time was absurdly small, yet its general direction was unquestionably the same as that of the contemporaneous

legislation in the continental countries. The Irish land question was brought into recognition by the report of the Devon commission in 1845, and was elevated into the prominence it has never since lost by the famine immediately following that year. But the measures for reform introduced into parliament representing the views of Irishmen were all rejected and the only resulting legislation was the creation of the Encumbered Estates Court, in 1849. This court had large powers for the selling of estates, even when settled by bequests, if they were heavily encumbered, on the appeal either of the holder or of the creditors.

During the whole revolutionary period and the early part of this century, the principal incentive to reform of land tenure was the feeling that the feudal system and communal holdings were unjust, a tyrannical abuse, a privilege of the few at the expense of the many. In abolishing this system the liberal governments simply felt that they were attacking an old injustice. Subsequently, however, the movement toward the enfranchisement of land was reinforced by a second influence, that is, by the strong bent of the economic thought of the time toward individualism, freedom of contract, and absolute ownership. The political economists had no mercy on entails, primogeniture, communistic holdings, government interference or any other limitation to freedom of sale and bequest, or the readiness of disposition and use of land according to the supposed laws of demand and supply. The group of views held and taught by the most influential political economists of the first half of this century therefore worked in the same direction and gave added force to the movement of land reform already long in progress. This influence as it affected the land question may be considered to have reached its height in the decade after 1850.

During that period, in nearly every country in Europe, laws were passed requiring the registry of mortgages and other land operations, facilitating the purchase of encumbered lands by the peasantry, and simplifying judicial procedure in foreclosure and ejectments. Such laws presupposed the abolition

of the feudal system, and were simply improvements in the new order of landholding. Instances of the first of these classes of laws are found in the Belgian law of 1852 and the French law of 1855, and of the second class in the legislation of Saxony, Prussia, Baden and Hesse, to help the peasants to pay the necessary indemnity for their farms, in 1850 and 1851. The Irish acts of 1854 and 1858 are instances of the third class of reforms. Probably it is a mere chance co-incidence that in America, in the State of New York, in the same period, the combined action of the legislature and the courts dissolved the double ownership of the landlord and the tenant in the so-called *leasehold* districts. But the clearest instance of the influence of economic theory on land legislation was in the Irish land law of 1860. This act introduced the simple principle of absolute free contract into the complexity of Irish land conditions. At one stroke it changed the whole relation of landlord and tenant from one of *status* to one of contract. With studied care it disregarded entirely that "tenant-right" which was claimed and believed in by the great mass of Irishmen as the foundation of their tenancy, and which was half acknowledged by earlier, and entirely recognized by later legislation. Before this time the Irish courts had been looked upon as performing the function of determining the relative rights of landlord and tenant; by this law they were restricted to the sole duty of enforcing contracts entered into between landlord and tenant. Thus an attempt was made to put land owning and land renting in Ireland on the same footing as any mercantile operations. The influence of economic teaching on the minds of the English legislators of that time could hardly be shown in a more striking manner than by the passage of such a revolutionary law, reversing the whole development of Irish land history up to that time, and trying to make its system conform immediately to a preconceived theoretic model. A few years later, another example of such influence was found in the new Portuguese code of 1867, and its effect in destroying the old system of land tenure known as *aforamento*. This was a kind of perpetual lease, introduced by the Benedictine

monks in early centuries on their domains, and gradually became the prevailing form of landholding in southern Portugal. A farm held on these conditions could not be divided, and the tenure provided for the payment of a fine on every alienation, either by sale or by bequest. The code of 1867 was professedly based on that of France, and intended to liberate the soil and reconstitute absolute property in land. It prohibited, therefore, payments on occasions of an alienation, as being a feudal recognition, and forbade bequest of all the land of a father to any one child. These two provisions struck at the primary characteristics of the tenure mentioned above, and under their action *aforamento* has since been rapidly passing away. The same influences in Spain have led to the division and sale of much of the property of the communes.

Down to as late a period as 1860, at least, the tendency of land legislation was all in one direction. This was toward making land an object of individual and uncontrolled ownership, of free contract and free disposal; toward making it the object of possession, use, and exchange in just the same way as a piece of furniture, a horse, money, or any other article of personal possession is at the disposal of its owner. Within a period of three quarters of a century the mediæval bases of landholding had been destroyed and an individualistic form of tenure substituted. Private property in land had been created; land had been brought into the category of objects of personal ownership. The laws of the middle of the century, moreover, over all central Europe, seemed to tend toward a further development of the characteristics of the new system.

If, however, we abandon the method of tracing the course of land legislation from the French revolution downward, and beginning with the most recent laws and proposals for laws, trace legislation upward through the last decade or two, we will find ourselves in the midst of a strikingly different tendency. For instance, in last winter's session of the French chambers of deputies, three distinct laws were introduced providing for the compulsory payment by the landowners to an outgoing tenant of the amount by which he has made the farm more

valuable. A law of the same effect was passed in England in 1883, and one of much the same import as early as 1875. The principle was introduced in Scotland in 1885, in the crofters acts, and in Ireland in the land acts of 1870 and 1881. An act for the same purpose was debated in the Belgian parliament in 1888, and although it failed to pass, was only defeated on an unessential argument. In all of these laws and projects of laws the landlord and tenant are forbidden to contract themselves out of their provisions. The normal case therefore would be one where the tenant independently of the landlord, without his participation and even possibly without his consent would put any such expense upon the land as he could make appreciable and then at the expiration of his tenancy collect the proper indemnity from the landowner. There is in this case a considerable deduction from the landowner's complete control of his land. Indeed such a principle when admitted exactly reverses the former policy of assimilating land to other forms of property, and introduces an element of joint double ownership, instead of absolute single possession. Coming from an entirely different origin, it brings in practically the same combined rights to property in the soil as those which existed in the feudal manor.

Again, the Prussian lower house, in September, 1890, passed a law allowing the formation of *Rentengüter*. That is, it permitted the establishment of what are practically perpetual tenancies, on a ground-rent irredeemable except by consent of both parties. This legislation, if completed, would be a return toward such tenures as the Portuguese *aforamento*, Italian *allivelazione*, American lease-holds and ground-rents, and others, which were the especial objects of destructive effort in the legislation of the first half of the century. The idea that land should be tied up in a form difficult of alienation, and incapable either of being resumed by its original grantor or freed from incumbrance by its holder, is one utterly repellent to the spirit of the legislation already discussed, and yet it is the deliberate object of more than one recent proposal.

Still a third instance of reversal of policy is in the matter of

communal lands. In England there were few of these left, but their preservation, instead of enclosure and division, has been the object of successive acts reversing the previous policy, beginning with the "metropolitan commons act" in 1866. The English allotments act of 1886 enabled local authorities to acquire land by compulsory purchase for the purpose, among others, of forming common pastures. On the continent the same feeling has shown itself in an appreciable diminution in the process of selling communal holdings, and a study of the possibilities of utilizing such as remain in a more profitable way. Such a movement is, of course, quite contrary to the old effort to make land an object of ready division and sale. It seems to acknowledge that there are some uses of land which are better served by keeping it in the hands of the community than by distributing it to individuals.

Interferences between landlord and tenant by which the community, as a whole, sees to it that the tenant secures better terms than mere competition has been found to give him, are numerous in recent legislation. The Irish land act of 1870 gave compensation to the tenant for disturbance as well as the compensation for unexhausted improvements already mentioned. The law of 1881, in addition, provided for a government estimate of what was a fair rent, and this the landlord was bound to accept. The same provisions were incorporated in the Scotch crofters acts of 1885 and 1886. The latter also gave the authorities power to take land from the landlords and add it to the crofts of the peasants at an official, not a competitive, rent. Similarly, the allotments act of 1886 gave power to acquire land by compulsory purchase in order to let it to small cultivators. Still more radical propositions have been made by a commission of parliament recently appointed to investigate the question of the distribution of land. These measures certainly represent a very different principle from that typified by the Irish land act of 1860, very different from a régime of pure contractual relation between landlord and tenant.

Thus in at least four different aspects of landholding, recent laws have shown themselves to be of a directly opposite ten-

dency to that of the first half of the century. If these measures of reform of land tenure are followed up they will prove to have this new tendency since about the year 1870. This then was the turning of the tide. Consciously or unconsciously, at one time in one aspect of landholding, at another time in another, agitation, interest, legislation have departed from their old ideas and turned toward new. We have apparently ceased to try to treat land exactly as other forms of property. Recognizing its intrinsic peculiarities, society is struggling with the problems involved in its more just and at the same time equally productive distribution and use. And this, like the earlier movements, is practically contemporaneous in all the countries of Europe. Just as the process of early enfranchisement followed the same general fortunes in each of the countries during one period of modern European history : just as land tenure in the several countries was affected nearly alike by the political currents and countercurrents of the time : just as the influence of political economy came to reinforce the movement in all the countries—so the cessation of the older course of laws came at nearly the same time, and the tendency of recent legislation has been strikingly alike in all Europe.

The movement away from individualism in land owning must therefore be considered as a general one, not confined to any particular country. It is part of the great social movement of our time, turning away from mere freedom of the individual and seeking for a reorganization of the community, disavowing the rule of selfishness however "enlightened," and insisting on some degree of associative action, control and enjoyment.

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